

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

ENV-2016-WLG-000028

UNDER the Resource Management Act 1991

AND

IN THE MATTER OF an application for declarations under section 311 in
relation to the coastal provisions of the Kapiti Coast
Proposed District Plan

BETWEEN **COASTAL RATEPAYERS UNITED INCORPORATED**
Applicant

AND **KAPITI COAST DISTRICT COUNCIL**
Respondent

MEMORANDUM OF COUNSEL FOR THE RESPONDENT

24 March 2017

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MAY IT PLEASE THE COURT

1. The Respondent has received the interim decision of the Environment Court dated 3 March 2017.
2. In relation to declaration 2, the Respondent notes the Court's comments at paragraph [58] that all possible resolutions to this issue should be fully considered before putting ratepayers of the Kapiti District to the further expense inherent in undertaking variations of the PDP.
3. The Respondent appreciates the Court's consideration of that matter. Clearly undertaking a further variation will involve considerable expense for the community and a diversion of the Respondent's resources away from the efficient completion of the PDP process.
4. The Respondent has worked through the potential options for addressing this issue and considers that there are two primary options:
 - 4.1.1 **Option One** – a correction of minor errors under clause 16(2) of Schedule 1, as referred to by the Court in paragraph [59] of its interim decision; and
 - 4.1.2 **Option Two** – further withdrawals of PDP provisions under clause 8D of Schedule 1, as referred to by the Court in paragraph [62] of its interim decision.
5. These two options are addressed in turn below.
6. Counsel for the Respondent has had a constructive discussion with Counsel for the Applicant, and Counsel will file separate Memoranda setting out the positions of each party.

Option One - correction of minor errors

7. The Respondent appreciates the Court's comments on the potential use of clause 16(2) of Schedule 1 as an approach to resolving this issue. The Respondent's position is that these were inadvertent changes¹ that came about as a consequence of the complexity of the PDP withdrawals, and that the use of clause 16(2) of Schedule 1 could be a potential solution to that.

¹ As referred to in paragraph [59] of the interim decision.

8. However, the Respondent has concluded that the preferable approach would be to undertake further withdrawals of PDP provisions (discussed further below).
9. The Respondent has also corresponded with Counsel for the Applicant who has indicated that the Applicant does not consider clause 16(2) to be open to the Respondent in these circumstances. That has also influenced the Respondent's preference for the withdrawal option discussed below.

Option Two - withdrawal of further provisions

10. The Respondent considers that the most practical way forward is for it to undertake a further withdrawal of the six provisions referred to in paragraphs [57] and [58] of the Court's interim decision (provisions 2, 4, 5, 6, 7 and 9).
11. As the Court has noted in paragraph [62] of the interim decision, the Respondent does have the power to undertake further withdrawals under clause 8D of Schedule 1.² The Respondent considers that if it withdraws those six provisions from the PDP, the issues raised by the Applicant under declaration 2 have been addressed.
12. The Respondent has also considered whether there would be any further 'knock-on' consequences for the PDP from such withdrawals, and has concluded that will not be the case.

Process

13. The Respondent's management team intends to prepare a report and recommendations to the Council that these six provisions be withdrawn from the PDP.
14. The report and recommendations will be considered by the full Council at its meeting on 13 April 2017.
15. If the Council accepts those recommendations, then shortly afterwards a public notice will be given of these further withdrawals of the six provisions from the PDP.
16. There will also be communication with the PDP hearings panel throughout this process.

² Noting the Interpretation Act 1999, section 16(1).

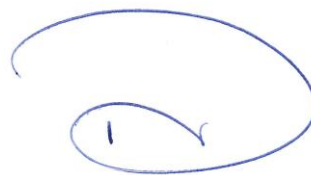
North Otaki Beach Residents Group

17. The Court will recall that a settlement agreement was entered into with the North Otaki Beach Residents Group (NOBRG) at the conclusion of the earlier proceedings.³ That agreement provided for consultation with NOBRG as part of the Respondent's consideration of next steps in the coastal hazards process.
18. The Respondent has consulted with Counsel for NOBRG who has confirmed NOBRG's broad agreement to the approach suggested in this Memorandum.

Next steps

19. The Respondent respectfully seeks leave to report back to the Court following the Council meeting on 13 April 2017. The Respondent proposes that reporting date could be 20 April 2017.
20. Ultimately, it will be for the Court to determine whether to exercise its discretion and make declaration 2. It is respectfully submitted that given the Respondent's intention to withdraw the six provisions in issue from the PDP, no such declaration is necessary and there would be no utility in making such a declaration.
21. It is anticipated that the Court may wish to await confirmation that the provisions have been withdrawn before making a final decision.

DATED at Wellington this 24th day of March 2017



Paul Beverley

Counsel for the Respondent

³ ENV-2016-WLG-16.